

## **NEBRASKA STATE BOARD OF HEALTH MEETING**

### **MINUTES – November 21, 2011**

**ATTENDANCE NOTIFICATION.** A regular meeting of the State Board of Health was called to order by the Chair, Gary Westerman, DDS, at 1:05 p.m. on November 21, 2011 in Conference Room 1-Z of the State Office Building in Lincoln. Copies of the agenda were mailed to board members, news media, and other interested parties prior to the meeting, and posted on the Health and Human Services website. The following members were present: Daniel Bizzell, EdD; Janet Coleman; Edward Discoe, MD; Ted Evans, DVM; Russell Hopp, DO; Diane Jackson, APRN; Ken Kester, Pharm D, JD; Dale Michels, MD; Debra Parsow; Paul Salansky, OD; Wayne Stuberg, PhD, PT; John Tennity, DPM; Gary Westerman, DDS; and Daryl Wills, DC. Quorum met.

Members not in attendance: Roger Reamer, MBA; Rich Robinson, PE; and Luisa Rounds, RN  
Staff attending: Ron Briel, Monica Gissler, David Montgomery, Anne Owens, Kay Pinkley

**APPROVAL OF AGENDA.** Dr. Westerman asked if there were any changes to the agenda for the meeting today. There being no objections, the agenda was approved by consent calendar.

**APPROVAL OF MINUTES.** Dr. Westerman asked if there were any changes to the minutes from the September 19, 2011 meeting. Dr. Stuberg attended both the PT and Chiropractic hearings, and the November Board of Health meeting date was corrected. There being no objections, the minutes were approved by consent calendar.

**CHAIRPERSON'S REPORT.** Dr. Westerman reported on the following:

1. Has anyone attended any professional board meetings that they would like to report on?

There is a current 2011/2012 Professional Board Meeting Schedule on the handout table. It is important that you let Monica know in advance when you plan to attend a meeting, and if you plan to attend the entire meeting or just a portion. If the meeting includes a working lunch, a lunch will not be ordered for you unless specific arrangements are made. A new list will come out in the next couple of weeks.

Ms. Jackson attended the APRN Board meeting on October 7<sup>th</sup>. Issues re: collaborative practice, especially the psychiatric practice nurses. Not much in the way of disciplinary actions.

Thank you to Dr. Michels for volunteering to present on our behalf at the New Professional Board Member Orientation on December 2<sup>nd</sup>.

2. This afternoon we will hold election of officers. After the public meeting today the Executive Committee will review the 2012 committee preference sheets, so please make sure you have submitted that to Monica.

3. Diana Baker, Section Administrator of the DHHS Licensure Unit, Nursing Section, has resigned effective December 16. She will be retiring.
4. René Tiedt, who was a supervisor in the Child Care Licensing program at the Gold's office, begins today as the new Health Section Administrator for the position that was held by Diane Hansmeyer. She stood up and introduced herself.
5. Our sympathy goes out to the family of Dr. Terry Gee, who passed away on November 5<sup>th</sup> after battling brain cancer for a year. He served as a physician member on the APRN Board.
6. I want to thank the members of the Professional Boards Committee, staff, and any other members who gave up two Sundays to conduct professional board member interviews in September and October.
7. Committee Chairs – your draft annual committee report will be presented this afternoon. Please finalize your reports now and submit them to Monica by December 15<sup>th</sup>.
8. Our next meeting will be on January 23<sup>rd</sup> in the Nebraska State Office Building.
9. Later on this afternoon we will review proposed regulations for Chiropractic and Physical Therapy. I would like to take this opportunity to remind you that this is not a public hearing. I will entertain a joint discussion on these regulations, but they will be voted on separately. Each side will be given an opportunity to present comments, but I will limit you to 15 minutes total for your side (5 minutes each), so please coordinate your comments.

**CHIEF MEDICAL OFFICER'S REPORT.** Dr. Acierno reported.

- Flu tracking started on October 2<sup>nd</sup>. The first Influenza A case was reported in Omaha, for a person had been traveling outside of the country. The vaccine is recommended for anyone age 6 months and older.
- There is a diabetes education awareness campaign going on now – Defend Against Diabetes. There is a diabetes risk assessment self test on the DHHS website that takes less than a minute to take but provides information on the possibility of Type II potential. Six key areas: eating healthy, being active, maintaining a healthy weight, avoid tobacco, learn about diabetes, and see your doctor. [www.defendagainstdiabetes.ne.gov](http://www.defendagainstdiabetes.ne.gov)
- The Child Death Review team released a report; he is the chair. On average, about 20% of child deaths could be prevented (165 out of 551 in the study period), with the top causes being related to birth defects, conditions related to pregnancy problems, and motor vehicle-related accidents. Half of those children who died in motor vehicles were not properly restrained in a seat belt. Education of parents, healthcare and child care providers will really

help. SIDS accounted for 33 Nebraska deaths in 2007-2008. In 2008, there were 15 SIDS deaths, the lowest number since 1980. (The full report is on the DHHS website.) Prevent preterm delivery; smoking cessation; community education regarding co-sleeping; vaccinations; etc.

Ms. Coleman made a motion to receive these reports, second by Dr. Evans; all in favor by voice vote.

### **COMMITTEE REPORTS.**

**Credentialing Review (407) Committee** – Ms. Coleman, Committee Chair, presented.

- Update on Potential Technical Reviews: Lactation Consultants, Music Therapists, Acupuncturists, and EMS in homes. Music Therapy is the most likely of these to enter the formal Credentialing Review process first.
- The Committee is suggesting there be a professional member pool created of 6-8 members, similar to the public pool, composed primarily of persons who have been professional representatives from the Board of Health or other licensing boards. The expectation is that they would be interviewed by the Professional Boards Committee.
- Ms. Coleman discussed her annual report. It has been a very quiet year for the 407 process.

Dr. Michels made a motion to receive this committee's report, seconded by Dr. Stuberger; all in favor by voice vote.

**Rules and Regulations Committee** – Dr. Kester, Committee Chair, reported.

Committee voted on the PT/Chiro regs and voted to approve each set of regs as written.

- Reviewed the current status of the UCA Regulations.
- Reviewed the draft Rules and Regulations Committee Report for 2011.
- Discuss and vote on approval of 172 NAC 29, Licensure of Chiropractors.  
(Staff: Helen Meeks, Licensure Unit Administrator and Bill Wisell, Licensing Coordinator.)

Dr. Westerman explained that this is not a public hearing, but those who want to make comments may come forward, with testimony limited to five minutes. These minutes will just recap the highlights, and are not intended to serve as a transcript of this meeting.

Robert Sandstrom, PhD, PT – talked about his letter to the Board. He has no disagreement with the committee's decision, but he does have a problem with the Attorney General's office and the opinion made without any consultation with physical therapists (PT). There was extensive input

from chiropractors. He is concerned that there can be legal action from a skilled attorney in response to these regulations. The last time physical therapists testified at this DHHS sponsored mediation meeting, several months later the Department sent pre-investigative letters to several of the physical therapists who participated. If the AG approves the Chiropractic regulations and not the PT regulations, this will become a problem. Dr. Sandstrom served on the Board of Health for 10 years, and never saw any other professions come to this level of turf battle that the chiropractors and physical therapists are engaged in.

Dr. Wills stated that the PTs bypassed the 407 credentialing review process, and asked Dr. Sandstrom if he thought that was fair. Do you feel that the department should have consulted chiropractors in that process? Dr. Sandstrom explained that the decision not to do a 407 was made by Director Nelson at that time. PTs paid the \$500 fee twice, asking for a 407. It is maddening to try to follow the rules, and then be accused of not following them.

Dr. Kirk Peck – Current Chapter President of Nebraska PT Association – representing the association right now. He wanted to reiterate his concern from his letter, his concern about the process with this AG opinion that is outside of the rules and regulations, and the issue with Grade V mobilization and manipulation that the AG says they may do. What should he say to PTs? Go ahead and do this (which is in the practice act) but the AG can enforce it either way? This whole situation leaves us in a state of ambiguity and high question of how and what to communicate to their Association members.

Dr. Wills explained about the nine case law situations in Nebraska which equate chiropractors with grade V manipulation. It is too bad that these terms do not appear in Nebraska laws, to clarify what the definitions mean. Dr. Peck added that some of these case laws date back to 1915. The 2009 AG Opinion is what has confused everyone.

Dr. Kester acknowledged that this situation will not be resolved to everyone's satisfaction, but the Board of Health would like each profession to have their regulations to practice under, and just move forward the best they can. Our intention is that the physical therapy regulations will apply to physical therapists, and the chiropractic regulations will apply to chiropractors, with oversight of each by their respective boards.

Dr. Evans asked if there have been a lot of problems with PTs and grade V manipulation. Dr. Peck said there hasn't been any from a public safety standpoint; there has never been any legal issue with this. This is part of the mandated PT curriculum in all of the PT schools. Dr. Stuberg said that during the 10 years he served on the Board of Physical Therapy, there was one complaint brought to the board and nothing was ever taken beyond pre-investigation. Dr. Wills said this is taught in weekend courses, and except for recent graduates, most PTs don't have training in grade V manipulation. Dr. Stuberg said he is a 1977 graduate and was trained in this and has practiced all grades of mobilization since 1977. It is disingenuous to say PTs are not doing grade V. There have never been any disciplinary action brought against PTs in Nebraska even though PTs have been doing this. Dr. Wills stated that a study provided by CNA, the

Continental National American Group, a major malpractice insurance company for physical therapists, in conjunction with HPSO, Healthcare Providers Service Organization, found that the second leading cause of physical therapy malpractice allegations came from injury during manipulation.

There being no further testifiers, Dr. Kester made a Committee motion to approve 172 NAC 29, Licensure of Chiropractic regulations. Dr. Stuberg pointed out that on page 2 of the draft regulations, the definition of what a chiropractic adjustment is includes the statement: “**Beyond** the normal physiologic range of motion of the joint” is terminology that is already in statute in the practice of physical therapy. Dr. Stuberg clarified that he is speaking in opposition to these regulations because of that one word – these should go back to the Chiropractic Board to have this fixed because this is just another effort by the chiropractors to shoot at the PTs. Dr. Kester clarified to Ms. Coleman that the problem is that there has never been a definition. Physical therapists are not accountable to the Chiropractic Board. Ms. Coleman made a motion to call the question. Discoe nay, all else aye. Roll call vote: Voting yes: 10 (Coleman, Evans, Jackson, Michels, Parsow, Kester, Salansky, Tennity, Westerman, Wills); voting no: 4 (Stuberg, Hopp, Discoe and Bizzell); not voting: 0. Motion carries.

- Discuss and vote on approval of 172 NAC 137, Licensure of Physical Therapists and Certification and Supervision of Physical Therapy Assistants (Staff: Helen Meeks and Bill Wisell). Dr. Kester made a motion to approve these regulations. Roll call vote: Voting yes: 11 (Bizzell, Coleman, Evans, Jackson, Kester, Michels, Parsow, Salansky, Stuberg, Tennity, Westerman); voting no: 3 (Discoe, Hopp, Wills); not voting: 0. Motion carries.

Dr. Hopp made a motion to receive this Committee report, second by Ms. Coleman, and all in favor by voice vote.

**Professional Boards Committee.** Dr. Tennity, Committee Chair, reported. Committee members conducted 11 interviews on October 16, 2011 and one today.

Dr. Westerman asked if the members would like to vote collectively on all proposed appointments. All were in favor to vote on all appointments together.

Board of Advanced Practice Registered Nurses: For the Physician with a relationship with a nurse anesthetist, appoint Christopher Price, MD of Norfolk for the partial term of November 21, 2011 through November 30, 2012; for public member, appoint Diane Hansmeyer of Hallam for the term of December 2, 2011 through November 30, 2016.

Board of Athletic Training: For the public member, appoint Timothy Wacker of Lincoln for the term of December 1, 2011 through November 30, 2016.

Board of Chiropractic: For the chiropractor position, appoint David Lauer, DC of Lincoln for the term of December 1, 2011 through November 30, 2016.

Board of Hearing Instrument Specialists: For the Hearing Instrument Specialist member, appoint Sandra Wills, AuD of Lincoln for the term of December 26, 2011 through November 30,

2016; and appoint Britt Thedinger, MD of Omaha for the term of December 26, 2011 through November 30, 2016.

Board of Massage Therapy: For the position of Massage Therapist, reappoint Keli Hupka, LMT of Lincoln for the term of December 1, 2011 through November 30, 2016.

Board of Medicine and Surgery: For the position of Medical School Faculty Member, appoint Roger Brumback, MD of Omaha for the term of December 1, 2011 through November 30, 2016.

Board of Nursing: For the position of APRN, appoint Kelley Hasenauer, APRN-NP of Lincoln for the term of December 2, 2011 through November 30, 2016.

Board of Occupational Therapy Practice: For the position of Occupational Therapist, reappoint Mary Walsh-Sterup, OTR/L, CHT of Grand Island for the term of December 1, 2011 through November 30, 2016.

Board of Pharmacy: For the position of public member, appoint Michael Losee, M.A., of Lincoln for the term of December 1, 2011 through November 30, 2016.

Board of Respiratory Care Practice: For the position of public member, appoint Teresa Hawk, M.A. of Chadron to the term of December 1, 2011 through November 30, 2016.

Dr. Tennity stated that we are still seeking a Registered Environmental Health Specialist and a Funeral Director and Embalmer to fill two remaining vacancies.

Dr. Tennity made a committee motion to approve these appointments, and offered the option to vote individually on an appointment. Voting yes to approve all proposed appointments: 14 (Bizzell, Coleman, Discoe, Evans, Hopp, Jackson, Kester, Michels, Parsow, Salansky, Stuberg, Tennity, Westerman and Wills); voting no: 0; not voting: 0. Motion carried.

Members reviewed the appointment schedule for 2012, and discussed which professional board chairs to invite to meet with them.

The issue of 2012 meetings with professional board chairs was discussed, and the duties of the Professional Boards Committee members in regard to screening applications.

Dr. Michels made a motion to receive this committee's report, seconded by Ms. Parsow; and all were in favor by voice vote.

**Public Health, Education and Legislation Committee:** Dr. Hopp, Committee Chair, presented.

- Legislative Update. The special session is in progress. There will be a PHEL conference call on January 20<sup>th</sup>.
- January 23, 2012 Legislative Luncheon. There was a staff change at the Nebraska Bar Foundation, and our reservation was lost in the turnover process. We will hold our annual legislative luncheon that day, so please bring cash to pay Monica.
- Annual Report. Reviewed and approved by the Committee.

- Other Committee Update – Discussed the revision process for the 407 credentialing review process. There is an ad hoc committee meeting with Senator Gloor, with a few Board of Health members involved (Hopp, Coleman, Michels), as well as Mr. Montgomery. The draft legislation is only being chaired with the ad hoc committee at this time.
- The application for the Public Health Recognition Program will be on the Board of Health page of the DHHS website, after December 9<sup>th</sup>.

Dr. Evans made a motion to receive this committee's report, second by Dr. Michels, and all were in favor by voice vote.

### **UNFINISHED BUSINESS.**

- Mr. Montgomery addressed a question that came up during a professional board interview regarding the Occupational Therapy scope of practice. There is a conflict between the actual practice act and the wording in the Uniform Credentialing Act that deals with OT title protection. If this issue came up with a conflict, it would have to be addressed. This is an apparent oversight in the UCA. The requirements for the OT board positions still prevail in terms of having been in practice and licensed both for at least five years. The issue of schools is not addressed in the statute. The statute is clear that licensure is required, but there are broad exemptions. The OT professional board members must be licensed.
- Dr. Westerman discussed the letter from the Dental Hygienists (June 16<sup>th</sup>) regarding placing sealants. This was discussed at the last Board of Dentistry meeting, and no action was taken. A letter was sent to Dr. Schaefer requesting that DHHS Legal review the issue and provide clarification as to the legal basis for allowing dental assistants to place sealants.
- Dr. Westerman sent a letter on Dry Needling to Dr. Schaefer last month.

Dr. Wills made a motion to receive this committee's report, second by Dr. Kester, and all were in favor by voice vote.

### **NEW BUSINESS.**

- Election of Board of Health officers. There was a unanimous ballot with the three incumbents as the only names on the ballot. Ms. Coleman made a motion to re-elect all three members, second by Dr. Salansky, and 14 members voted by voice vote in support.

For position of Chair: Gary Westerman, DDS was re-elected.

For position of Vice Chair: Daryl Wills, DC was re-elected.

For position of Secretary: Dale Michels, MD was re-elected.

All three accepted their reappointments. Congratulations to our officers!

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**PUBLIC COMMENTS.** None.

**PREPARATION FOR NEXT MEETING.** The next regular Board of Health meeting will be January 23, 2012 at the State Office Building in Lincoln.

**ADJOURN.** There being no further business, the meeting adjourned at 2:29 PM. Minutes taken by Anne Owens and Monica Gissler.

These minutes were amended and approved by the State Board of Health on January 23, 2012.

***NOTE:*** If you would like to receive these minutes electronically instead of receiving a hard copy, please send a request to the email address below. Please also inform staff if you would like to be removed from this distribution list altogether.

*If you would like any attachments mentioned in these minutes, or have other questions, please contact Monica Gissler, 402/471-6515, Fax 402/471-0383, or email at: [monica.gissler@nebraska.gov](mailto:monica.gissler@nebraska.gov).*

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